

RECEIVED
FEC MAIL
OPERATIONS CENTER

Perkins
Coie

September 28, 2006

2006 SEP 28 P 2:38

607 Fourteenth Street N.W.
Washington, D.C. 20005-2011

PHONE: 202.628.6600

FAX: 202.434.1690

www.perkinscoie.com

BY HAND DELIVERY

Jeff S. Jordan, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5785

Dear Mr. Jordan:

I am writing on behalf of Mr. Jim Pederson, Pederson 2006 (the "Committee"), and Carter Olson as treasurer ("Respondents") in response to the complaint filed in the above-referenced MUR (the "Complaint").

The Complaint alleges that Respondents violated the reporting requirements of the so-called "Millionaires' Amendment" provisions of the Federal Election Campaign Act (the "Act") on five separate occasions by filing required reports late. Although Respondents concede that two of these reports were inadvertently filed late, the Complaint cannot support its conclusions as to the remaining three. Moreover, no candidate or campaign suffered any prejudice as a result of Respondents' inadvertent error. The Complaint is clearly a political maneuver orchestrated to generate negative attention on Mr. Pederson and the Committee in the remaining weeks of a heated campaign. The Commission should not reward such misuse of its resources, and should dismiss the Complaint without delay.

INTRODUCTION

Jim Pederson is the Democratic nominee for the U.S. Senate from Arizona. At the times relevant to this complaint, he was running unopposed for the Democratic nomination. Mr. Pederson was formally nominated at the Arizona Democratic primary, which took place on September 12, 2006.

The so-called "Millionaires' Amendment" provisions of the Act permit a non-self-funding opponent to raise funds under increased contribution limits and benefit from extra coordinated party spending when he runs against a candidate who uses his own personal money to fund his campaign. See 2 U.S.C. § 441a(i) (2006); 11 C.F.R. § 400.40.

2006 SEP 28 P 3:18
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

28044204257

Mr. Jeff Jordan
September 28, 2006
Page 2

An opponent's eligibility for these benefits generally depends on the extent that the self-financing candidate's personal spending gives him an advantage in the election, offset by half of any advantage the non-self-funding opponent has in fundraising from campaign donors. See 11 C.F.R. § 400.10.

The primary election and the general election count as separate election "cycles" for Millionaires' Amendment purposes. See *id.* § 400.2. This means that any benefits afforded as a result of a candidate's personal spending on his campaign apply only to the election in which the candidate is then running. If a self-financing candidate makes personal expenditures only before the primary election, only his primary opponents can take advantage of any increased limits or additional party spending granted as a result. *Id.*; see also FEC Advisory Ops. 2006-21, 2006-25.

To enable a non-self-funding Senate candidate to determine when he has access to higher limits, and what the applicable limits are, the Millionaires' Amendment and its implementing rules impose additional reporting requirements on a self-financing candidate's campaign. Specifically, if the candidate spends more than two times the statutorily-defined "threshold amount" in a particular election (primary or general), his campaign must file a report with the FEC, the Secretary of the Senate, and each opposing candidate in that election, on FEC Form 10, notifying them of his spending. 11 C.F.R. § 400.21. This report must be filed within twenty-four hours of the time the expenditure is made that brought total expenditures over the triggering amount.¹ *Id.*

After the initial filing, he must file an additional Form 10 report each time his additional personal expenditures in connection with that election exceed \$10,000. *Id.* § 400.22. Like the initial report, these subsequent reports must be filed with the Secretary of the Senate, the Commission, and each opposing candidate within twenty-four hours of the time the expenditure is made. *Id.*

DISCUSSION

A. The Complaint Cannot Support its Allegations as to Three of the Five Reports Cited

The Complaint alleges violations of the Act's reporting requirements in connection with five reports: those disclosing expenditures by Mr. Pederson made on March 31, May 8,

¹ The Commission has interpreted this rule to require filing by 11:59 p.m. the day following the day the expenditure is made. See FEC, Instructions for FEC Form 10.

Mr. Jeff Jordan
September 28, 2006
Page 3

June 14, June 30, and July 20. Three of these five reports – those disclosing the May 8, June 14, and July 20 expenditures – were timely filed.² The Complaint concedes that these reports were filed with the Commission on time, by the day after the expenditures were made that triggered the filing requirement. The Complaint nonetheless claims that the reports were filed in violation of the law because the Secretary of the Senate received them at a later date.

The Complaint provides no factual foundation for its argument that the reports were filed late with the Secretary of the Senate. It relies solely on the dates borne on the stamps on the documents themselves, affixed by the Secretary of the Senate's office sometime after the office received the documents. These stamps are evidence of nothing, except perhaps when the officials at the Secretary of the Senate physically processed the reports.

In fact, these reports were filed with the Secretary of the Senate on time, in accordance with Commission rules. FEC rules require reports delivered to the Secretary of the Senate to be sent by hand or by mail or overnight, *see* FEC, Instructions for FEC Form 10, and each one is considered timely filed as long as it is postmarked by the due date. *See* 11 C.F.R. § 104.5. The Committee sent all three of these reports by overnight mail, and each was postmarked on or before the due date. We have attached, at Exhibit A, the billing slips that show this.

Even if the Secretary of the Senate had received the Committee's Forms 10 late, the forms would still have been timely filed according to Commission rules. A Form 10 is considered filed on time if those recipients who must receive it electronically receive it on time. 11 C.F.R. § 100.19. The rules do not permit concluding a report is late solely based on the date of receipt by the Secretary of the Senate.

B. No Candidate or Campaign Was Prejudiced in this Matter

The Respondents concede that two of the reports cited in the Complaint – the initial report disclosing the expenditures made over two times the “threshold amount,” and the report disclosing the June 30 expenditures – were filed late. However, in light of the

² With respect to the July 20 expenditure, the Complaint notes that the Committee placed a media buy on that date and implies, though does not assert definitively, that Mr. Pederson may have contributed money to the Committee for that buy before the July 20 date that was not properly disclosed. This is simply not true. Mr. Pederson contributed \$459,098 to the Committee on July 20 to help facilitate the July 20 media buy and for other expenses. He made no reportable expenditures or obligations of funds after the June 30 expenditure but before July 20.

28044204259

Mr. Jeff Jordan
September 28, 2006
Page 4

circumstances of these late filings, the lack of prejudice to any candidate that resulted, and the Respondents' record since then of timely filings, the Commission should use its discretion and dismiss this matter.

The first late filing resulted from a misunderstanding of the Millionaires' Amendment filing requirements: the Committee believed that the initial report had to be filed within twenty-four hours of the Committee's expenditure of the funds contributed by the candidate.

The Committee read the Form 10 – whose heading simply reads “24-Hour Notice of Expenditure From Candidate's Personal Funds” – to mean that the reporting obligation was triggered by the Committee's use of funds Mr. Pederson contributed, rather than Mr. Pederson's initial contribution of the funds. See Affidavit of Darryl Tattrie, attached at Exhibit B. This is an easy mistake to make, particularly for individuals – like the Committee's staff – who are not familiar with the complicated and often confusing provisions of the Millionaires' Amendment and are trying to comply with them for the first time. Committee staff filed the initial Form 10 as soon as they realized their mistake, and, as the Complaint points out, filed the next two Forms 10 on a timely, twenty-four hour basis.

The second late filing, in connection with the June 30 expenditure by Mr. Pederson, resulted from a miscommunication among Committee consultants and staff members. June 30 fell on the Friday before the July 4 holiday weekend, and staff were unable to locate either the Committee's treasurer or assistant treasurer on short notice sufficient to accomplish timely filing. See *id.*

The Committee's inadvertent mistakes on these two filings did not prejudice or disadvantage any candidate or campaign. As noted above, for purposes of the Millionaires' Amendment, a self-funding candidate's “opponents” in the primary election are only those individuals running against him in the primary. The purpose of the Form 10 is to provide notice to those individuals so they may determine whether they have access to higher contribution limits as a result of the self-financing candidate's personal spending.

The Democratic primary was held on September 12, and both of the Forms 10 the Committee filed late in this matter were filed before that date. Mr. Pederson was unopposed in that election. Accordingly, no candidate, campaign, or party was prejudiced or disadvantaged unfairly because of the late filings.

28044204260

Mr. Jeff Jordan
September 28, 2006
Page 5

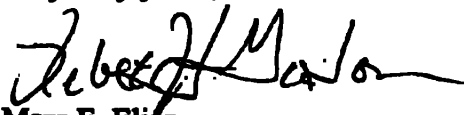
Most notably, since the July 4 filing, Respondents have put in place administrative controls to ensure timely filing of its Forms 10. Respondents have filed six additional Forms 10 since the July 4 filing, and all six have been filed on time.

The Complaint's comparison to MUR 5648 is unpersuasive, as the facts in that case differed significantly from those here. The candidate in that case was running in a contested primary. Moreover, the facts there involved numerous reporting errors of various kinds, including late filing of an initial Form 10, late filing of four additional Forms 10, complete failure to file a Form 10, and continuing omission of a candidate contribution on successive reports. See Conciliation Agreement, MUR 5648 (Broyhill for Congress).

By contrast, this is precisely the type of case in which the Commission should exercise its discretion and opt for dismissal. The mistakes were minimal and disadvantaged no candidate or campaign, and all required information was disclosed to the public. The Committee has acknowledged its oversights, has put in place administrative procedures to ensure they are not duplicated, and has a proven record of compliance to date. The Commission should not spend any further resources on this matter, and should dismiss it without delay.

Please do not hesitate to call us should you have additional questions.

Very truly yours,



Marc E. Eliás
Rebecca H. Gordon
Counsel to Jim Pederson, Pederson 2006,
and Carter Olson, as treasurer

Encls.

28044204261

FEC FORM 10

24-HOUR NOTICE OF EXPENDITURE FROM CANDIDATE'S PERSONAL FUNDS (11 CFR 400.21 and 400.22)
(Millionaires' Amendment)

1. Name of Candidate **Jim Pederson** 2. Office Sought **U.S. Senate** 3. State **AZ** 4. District **00** 5. Candidate ID Number **36AZ00142**

6. Name of Principal Campaign Committee **Pederson 2006** 7. Committee ID Number **C100414664**

8. Address

PO Box

Phoenix

10. Expiration Date

12/31/2006

06/01/2006

06/01/2006

06/01/2006

06/01/2006

06/01/2006

06/01/2006

06/01/2006

06/01/2006

06/01/2006

06/01/2006

06/01/2006

06/01/2006

06/01/2006

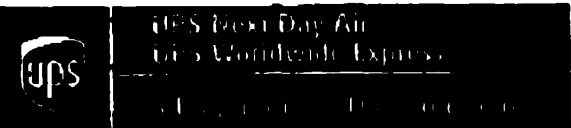
06/01/2006

06/01/2006

06/01/2006

06/01/2006

06/01/2006



12'X162'304'22 1000 0450

X623W4

FEC FORM 10

Darryl Tattic

PEDERSON 2006

631 E MCDOWELL RD

PHOENIX, AZ 85004

Office of Public Records

Secretary of the Senate

232 Hart Senate Office Bldg

Washington, DC 20510

512 106

SHIPPER'S COPY

3200000000

Carter Olson

05/09/2006

Further information contact:

Federal Election Commission, 800 E Street, NW, Washington, DC 20460

Toll Free 800-424-6622, Local 202-424-1100

FEC Form 10 (Rev. 02/2005)

28044204262

24-HOUR NOTICE OF EXPENDITURE FROM CANDIDATE'S PERSONAL FUNDS (11 CFR 400.21 and 400.22)
(Mitt Romney's Amendment)

B. Address
PO Box 24144

DEPARTMENT OF COMMERCE <i>Louis Chan</i>		DATE 6-14-06
<input type="checkbox"/>	<input type="checkbox"/>	For further information contact: Federal Election Commission, 1101 H Street, NW, Washington, DC 20460 Toll Free 800-424-6568, Local 202-424-6160

FEC FORM 10

24-HOUR NOTICE OF EXPENDITURE FROM CANDIDATE'S PERSONAL FUNDS (11 CFR 400.21 and 400.22)
(Millonares' Amendment)

1. Name of Candidate **Jim Pederson** 2. Office Sought **US Senate** 3. State **AZ** 4. District **00** 5. Candidate ID Number **86A200142**

6. Name of Principal Campaign Committee **C00414664** 7. Committee ID Number **C00414664**

8. Address **UPS Next Day Air**
UPS WorldWide Express

9. City, State **Phoenix AZ 85004**

10. Expenditure each of **12 X12 304 22 1000 2211**
X823W4

11. **FEC FORM 10**
Duke Kumbol
PEDESON 2006
631 E McDOWELL RD
PHOENIX AZ 85004
Secretary of the Senate 224-0322
Office of Public Records
232 Hart Senate Office Bldg.
Washington DC 20510

12. Total Expenditures Election Cycle To Date **4184098.00**

13. Signature of Committee Treasurer **Lois Pfau** DATE **7/20/06**

14. For Further Information contact:
Federal Election Commission, 435 E Street, NW, Washington, DC 20540
Toll Free 800-424-9530, Local 202-424-1100

15. SHIPPER'S COPY

28044204264

AFFIDAVIT OF DARRYL TATTRIE

1. My name is Darryl Tattrie. I am employed by Common Cents Consulting, a political compliance consulting firm. Through the consulting firm, I provide campaign finance compliance services to a number of federal political committees, including Pederson 2006, Jim Pederson's principal campaign committee for the U.S. Senate.
2. As part of my duties for Pederson 2006, I am responsible for facilitating timely, accurate, and complete filing of the campaign's federal campaign finance disclosure reports with the Federal Election Commission. Among the reports for which I am responsible is the FEC Form 10, which provides twenty-four hour notice of expenditures Mr. Pederson makes from his personal funds.
3. On March 31, 2006, when Mr. Pederson made his first contribution of personal funds to Pederson 2006, I understood that FEC rules required Pederson 2006 to file an initial report on FEC Form 10 within twenty-four hours of the date on which the campaign spent more than \$648,720 of those funds. I was not aware that the Form 10 reporting requirement was triggered when Mr. Pederson made the initial contribution to the campaign. Accordingly, I did not file the campaign's initial Form 10 on time. I filed the Form on April 7, 2006 as soon as I was notified of my error.
4. From that date forward, each time Mr. Pederson spent additional personal funds in connection with his election that exceeded \$10,000, with one exception, I sent an additional Form 10 to the FEC by facsimile or email by the next day, and by overnight mail, postmarked by the next day, to the Secretary of the Senate. I understood that these were the required procedures for timely filing.
5. When I was notified on June 30, 2006 that Mr. Pederson had spent an additional \$275,000 in personal funds in connection with his election, I tried immediately to reach Carter Olson, the treasurer of Pederson 2006, and Lois Pfau, the campaign's assistant treasurer, to arrange for one or the other of them to sign the report. Both of these individuals were traveling that day for the July 4th weekend and I was unable to reach either of them. I filed the Form 10 as soon as I was able to reach Mr. Olson and procure his signature on the Form.
6. Together with the campaign, I have put in place procedures to ensure that either Mr. Olson or Ms. Pfau can be reached at all times to facilitate timely filing of additional Forms 10.


28044204265

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed on September 27, 2006.


Darryl Tatarie

STATE OF Arizona)
County of Maricopa)

SUBSCRIBED AND SWORN to before me this 27th day of Sept, 2006.


Notary Public

My Commission Expires:

May 29, 2010

